

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2019-077-10095R

Parcel No. 120/04051-000-000

Donald I Cleghorn,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

The appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on February 13, 2020. Donald Cleghorn was self-represented. Assistant Polk County Attorney David Hibbard represented the Board of Review.

Donald and Sandra Cleghorn own a residential property located at 1103 West Street, Des Moines, Iowa. Its January 1, 2019, assessment was set at \$106,800, allocated as \$20,300 in land value and \$86,500 in building value. (Ex. A).

Cleghorn petitioned the Board of Review but did not identify a specific claim on his petition form. (Ex. C). The Board of Review denied the petition. (Ex. B).

He then appealed to PAAB claiming error in the assessment and fraud or misconduct Iowa Code § 441.37(1)(a)(4 & 5) (2019).

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code R.

701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it.

§ 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Findings of Fact

The subject property is a one-story home, with a small loft area, built in 1930. It has 1911 square feet of gross living area, 1008 square feet of unfinished basement, and an open porch. The improvements are listed in normal condition with a 4-05 grade (average quality) and received an 8% downward functional obsolescence adjustment in the assessment. There is also a detached garage built in 1978 listed in normal condition with a 4+00 grade (average quality). The lot is 0.282 acres. (Ex. A).

Cleghorn testified an inspector from the Assessor's Office came to his home in April 2019 but did not measure the improvements. Along with his appeal to PAAB, Cleghorn provided a Board of Review Appraiser Analysis detailing the inspection. He asserts the Assessor's Office incorrectly identified certain elements of his home.

Cleghorn believes the Analysis is false in stating "no foundation cracks were observed" when referring to his garage. (Appeal). Cleghorn testified the garage has no foundation and was built on a floating slab. He asserts the garage floor has a significant crack, which was also noted in the Analysis.

Cleghorn testified about an addition on the home with a loft area. He does not believe the 127 square feet of loft area¹ should be included in his assessment because a city building inspector told him it does not have adequate head room to be living area. He acknowledged the area is finished and currently furnished. We note that pursuant to

¹ This loft area is identified as upper living area in Exhibit A.

the 2008 IOWA REAL PROPERTY APPRAISAL MANUAL, upper level space with at least 5 feet of sidewall height should normally be valued. (MANUAL 7-44 to 7-45).

Cleghorn also testified the loft is not heated or cooled other than from open areas on the main level. The property is listed as having 1911 square feet of gas forced air and air conditioning, which includes the upper level loft space. (Ex. A). We note the MANUAL identifies gravity heat as being equal to base heat. (MANUAL 7-47).

Cleghorn also expressed his concern that his property backs to commercial properties along Army Post Road; there is also a work release facility, homeless shelter, and apartments located within a few blocks of his home.

Other than his testimony, Cleghorn did not submit any evidence to support his claims.

The Board of Review did not offer any witnesses and submitted no additional evidence beyond that which is required by PAAB Administrative Rule 701-126.7(3)(d).

The Board of Review pointed out that the Analysis states “[a]ll owners issues were addressed by a previous Board of Review and all of the Board changes are still in place.” A notation on the Analysis suggests the sales comparables showed a value of \$127,600 for the subject, which supports the assessed value.

Analysis & Conclusions of Law

Cleghorn contends there is an error in the subject’s property assessment and that there has been fraud or misconduct by the Assessor as provided under Iowa Code section 441.37(1)(a)(4 & 5). Cleghorn bears the burden of proof. § 441.21(3).

Under Iowa Code section 441.37(1)(a)(4), an aggrieved taxpayer or property owner may appeal their assessment on the basis “[t]hat there is an error in the assessment.” An error may include, but is not limited to, listing errors or erroneous mathematical calculations.” Iowa Admin. Code R. 701-71.20(4)(b)(4).

Under section 441.37(1)(a)(5), a taxpayer may assert there is fraud or misconduct in the assessment, which shall be specifically stated. “It is not necessary to show actual fraud. Constructive fraud is sufficient.” *Chicago and North Western Railway Co. v. Prentis*, 161 N.W.2d 84, 97 (Iowa 1968) (citing *Pierce v. Green*, 294 N.W. 237,

255 (Iowa 1940)). Constructive fraud may include acts that have a tendency to deceive, mislead, or violate confidence, regardless of the actor's actual motive. *In Interest of C.K.*, 315 N.W.2d 37, 42 (Iowa 1982) (quoting *Curtis v. Armagast*, 138 N.W. 873, 878 (Iowa 1912)). See 37 C.J.S. *Fraud* § 5 (2020); BLACK'S LAW DICTIONARY *Fraud* (11th ed. 2019). Misconduct is defined in section 441.9 and "includes but is not limited to knowingly engaging in assessment methods, practices, or conduct that contravene any applicable law, administrative rule, or order of any court or other government authority." §§ 441.9; 441.37(1)(a)(5).

First, we find no evidence the Assessor has engaged in any fraud or misconduct. Regarding Cleghorn's error claim, we note the record lacks any documentary evidence in support of his assertions. In the absence of more information regarding the crack in the garage floor, we are unable to conclude it is the type of issue warranting additional adjustment to the assessment or a finding of error. We note the Analysis indicated this issue had already been accounted for in a previous Board of Review action, which is still being applied to the subject's assessment.

Cleghorn's testimony also does not persuade us that the upper level finish of the dwelling, or the attic, should essentially have no value. The space is finished, is being used, and continues to offer contributory value to the property. Additionally, although we do believe there is some question about the proper valuation of the upper level heating and cooling elements, Cleghorn bears the burden of proof. The lack of documentary evidence supporting his assertion on this issue is to his detriment.

Viewing the record as a whole, we find Cleghorn failed to prove his claim.

Order

PAAB HEREBY AFFIRMS the Polk County Board of Review's action.


This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2019).

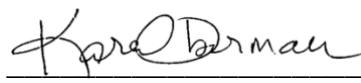
Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB

administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order² and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.


Dennis Loll, Board Member


Elizabeth Goodman, Board Member


Karen Oberman, Board Member

Copies to:

Donald Cleghorn
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Polk County Board of Review by eFile

² Due to the State Public Health Disaster Emergency caused by the coronavirus (COVID-19), the deadline for filing a judicial review action may be tolled pursuant to orders from the Iowa Supreme Court. Please visit the Iowa Judicial Branch website at <https://www.iowacourts.gov/iowa-courts/supreme-court/orders/> for the most recent Iowa Supreme Court orders.